

No. 13536

United States
Court of Appeals
for the Ninth Circuit.

SABLE HALL,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

Transcript of Record

Appeal from the Supreme Court for the
Territory of Hawaii

FILED

1952

PAUL M. ...

No. 13536

United States
Court of Appeals
for the Ninth Circuit.

SABLE HALL,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

Transcript of Record

Appeal from the Supreme Court for the
Territory of Hawaii

1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

1885

1886

1887

1888

1889

1890

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Acknowledgment of Service.....	22
Affidavit in Support of Jurisdictional Averment	15
Appeal:	
Certified Copy of Order Extending Time for Record on.....	23
Notice of.....	13
Order Allowing.....	20
Petition for.....	14
Praecipe for Transcript of Record on.....	21
Assignment of Errors.....	17
Bond	18
Certified Copy of Order Extending Time for Record on Appeal.....	23
Clerk's Certificate to Certified Record.....	79
Indictment	3
Judgment of Supreme Court.....	13
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	13
Opinion of the Supreme Court.....	6

INDEX	PAGE
Order Allowing Appeal.....	20
Petition for Appeal.....	14
Praecipe for Transcript of Record on Appeal..	21
Statement of Points Relied Upon and Designation of Record.....	81
Transcript of Proceedings.....	24
Witnesses:	
Guigni, Henry K.	
—direct	45, 49
Plyler, Boyce	
—direct	31
—cross	38
—redirect	43
Schwartzman, Clifford H.	
—direct	28, 47
—cross	57
—recross	58
Verdict	4

NAMES AND ADDRESSES OF ATTORNEYS

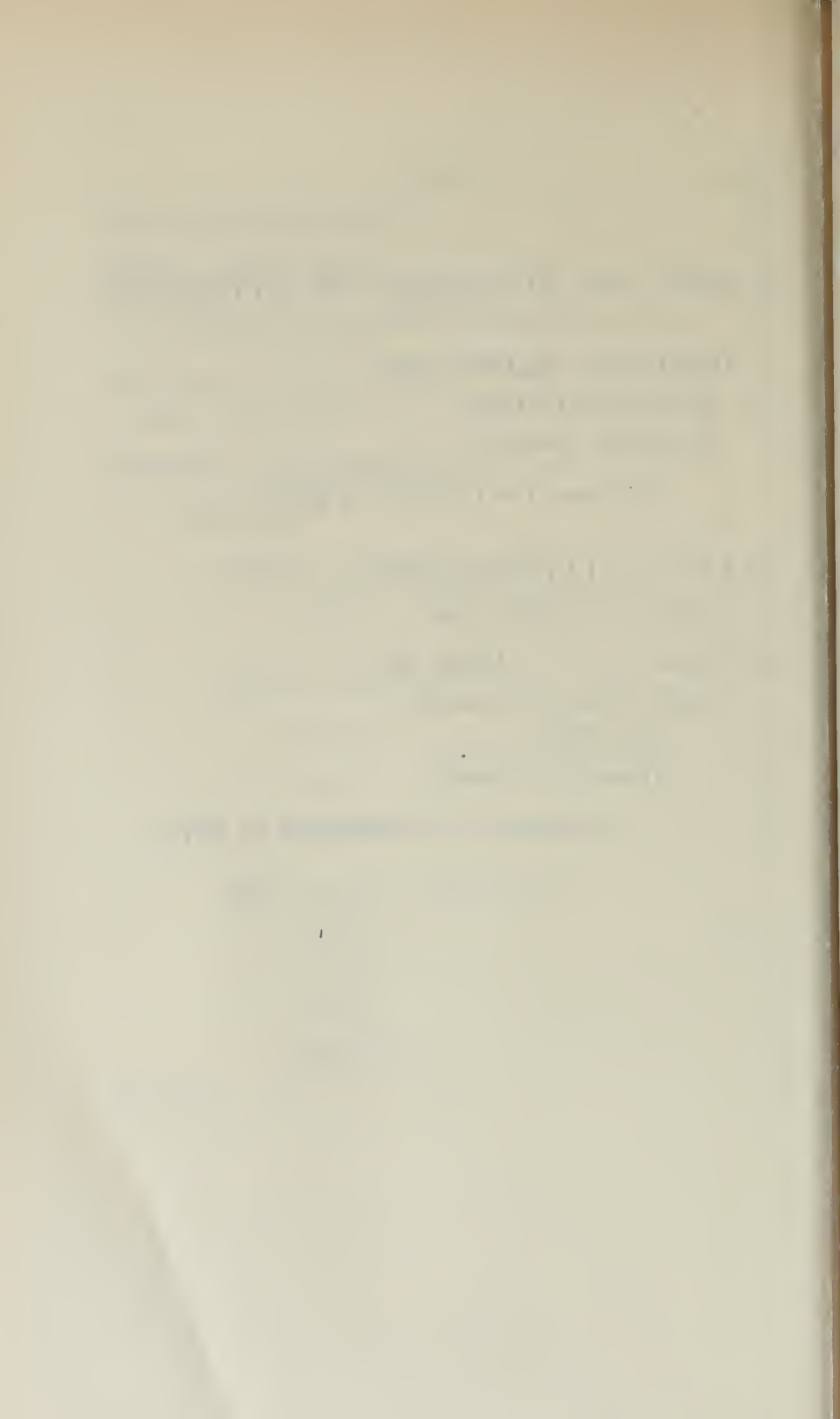
J. DONOVAN FLINT, Esq.,
95 Merchant Street,
Honolulu, Hawaii,

Attorney for Plaintiff in Error.

ALLEN R. HAWKINS, Esq.,
Public Prosecutor, and

ROBERT E. ST. SURE, Esq.,
Ass't Public Prosecutor,
City Hall,
Honolulu, Hawaii,

Attorneys for Defendant in Error.



In the Circuit Court of the First Judicial Circuit
Territory of Hawaii
January Term, 1949

LARCENY IN THE FIRST DEGREE

THE TERRITORY OF HAWAII,

vs.

SABLE HALL,

Defendant.

INDICTMENT

The Grand Jury of the First Judicial Circuit of the Territory of Hawaii do present that Sable Hall at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 14th day of April, 1949, did unlawfully and feloniously take and carry away certain things of marketable, salable, assignable and available value, to wit, certain moneys in the sum of and of the value of One Hundred and Sixty-three Dollars (\$163.00) lawful money of the United States of America, a more particular description of which is to the Grand Jury unknown, of the moneys and property of Boyce Plyler, the owner thereof and entitled thereto, with intent in her, the said Sable Hall, to deprive the owner aforesaid of the moneys and property aforesaid, and did then and there and thereby commit the crime of larceny in the first degree, [3*] contrary to the form of the statute in such case made and provided.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

A true bill found this 25th day of April, A.D. 1949.

PIERRE L. Le BOURDAIS,
Foreman of the Grand Jury.

JOHN R. DESHA,
Assistant Public Prosecutor of the City and County
of Honolulu.

Certified true copy.

[Title District Court and Cause.]

VERDICT

We the Jury, in the above-entitled cause, find the defendant guilty as charged.

/s/ JOHN T. POPE,
Foreman.

Honolulu, T.H., August 17, 1949.

[Endorsed]: Filed August 17, 1949.

In the Supreme Court of the Territory of Hawaii
October Term, 1951

C 21118

TERRITORY OF HAWAII,

vs.

SABLE HALL.

No. 2786

Error to Circuit Court First Circuit

Hon. J. E. Parks, Judge.

Argued May 1, 1952.

Decided May 14, 1952.

Towse, C. J., Le Baron and Stainback, J.

Criminal Law—right of trial judge to question witness.

A trial judge has the right to question a witness to elicit facts or clarify evidence so long as this is done in a fair and impartial way and is necessary to bring out facts essential to a just verdict. In this regard he has a wide latitude and discretion. The exercise of his discretion will not be reviewed on appeal except in cases of abuse thereof.

Same—larceny—corpus delicti—proof of by circumstantial evidence.

Corpus delicti may be proved by circumstantial evidence provided such evidence is sufficiently clear to exclude any reasonable hypothesis of innocence.

Same—same—same.

It is not essential that the corpus delicti should be established by evidence independent of that which tends to connect the defendant with the perpetration of the crime. The same evidence which tends to prove the one may also prove the other so that the corpus delicti and the guilt of the defendant may stand together inseparably on one foundation of circumstantial evidence. [7]

OPINION OF THE COURT

By Stainback, J.

The defendant was indicted for the crime of larceny in the first degree, to wit, that she did take \$163, the property of one Boyce Plyler. Defendant was convicted before a jury and sentenced to ten years in prison.

On April 13, 1949, Plyler and another sailor in the United States Navy arrived in Honolulu and registered at a hotel; at that time Plyler had \$170 in eight \$20 bills in his wallet in his pocket and \$10 in his front shirt pocket. Subsequently the sailors went to a chop suey place on Hotel street and Plyler spent a portion of the \$10 he had in his shirt pocket. After the sailors left the chop suey place and walked down the street, Plyler was stopped by the defendant who asked him if he wanted a woman; this was about 2:00 o'clock a.m. Defendant grabbed his arm and started to play with his privates; one of the defendant's hands was inside his trousers and the other in his left front trouser pocket. She told

Plyler to go down the street and she would follow. As Plyler walked down the street he noticed that defendant walked the other way with another couple. Becoming suspicious, he reached for his wallet and found it empty. He and his companion then ran down the alley, caught the defendant and asked her to give him back his money. A scuffle ensued and Officer Guigni ran over, took the persons into custody and brought them to Beretania street where Officer Schwartzman was on duty. The two officers and the victim then noticed that the defendant had a bulge in her mouth; when asked what she had in her mouth she did not answer but bent over and removed something green therefrom. He asked her to open her [8] hand and he recovered \$163 from the defendant's hand, consisting of eight \$20 bills and three \$1 bills. Defendant was taken to the police station and charged with larceny in the first degree.

The first assignment of error is that the court committed error in questioning the prosecution's witness, Boyce Plyler, after both counsel had finished their questions of this witness.

After Plyler had finished testifying the court asked a few questions as to the location and content of his wallet before he met the defendant and asked him to show the jurors where the defendant's hands were when she "felt him up." The witness demonstrated that one of the defendant's hands was inside his trousers and the other in his left front pocket, and that he had put his wallet in his left front pocket. The examination was brief and to the point and, so far as is shown by the record, there was no

unfairness in the judge's attitude or in the form of his questions.

The general rule is that a trial judge has the right to question a witness to elicit facts or clarify evidence as long as this is done in a fair and impartial way and is necessary to bring out the truth and facts essential to a just verdict.

In *Beal vs. State*, 138 Ala. 94, 35 So. 58, the court in discussing this question said: "It is always permissible for the Court, and its duty, to propound to witnesses such questions as it is deemed necessary to elicit any relevant and material evidence, without regard to its effect—whether beneficial or prejudicial to the one party or the other. The [9] development and establishment of the truth is its province and duty."

In *Dutton vs. Territory*, 13 Ariz. 7, 108 Pac. 224, the court in considering a case where the trial judge had participated in extensive interrogation of the witnesses, said: "It was not only the right, but the duty of a trial judge to question witnesses to bring out material points not made clear by counsel * * *." It stated further: "In this regard he has wide latitude and discretion, the exercise of which discretion will not be reviewed on appeal except in case of abuse thereof."

Hargrove vs. United States, 25 F. (2d) 258, goes very far indeed in permitting the trial judge not only to ask questions but to comment on certain phases of the case where the questions were intended to bring out the full facts to the jury.

Territory vs. Kekipi, 24 Haw. 500, held that a

trial judge's questions were justifiable to throw light on obscure testimony where he did not intimate an opinion on the facts in so doing.

There are literally hundreds of other cases to the same effect.

It is obvious that in the instant case the trial judge did not show any bias or intimate his opinion as to the guilt or innocence of the defendant in his questions.

The case of *Territory vs. Van Culin*, 36 Haw. 153, relied upon by defendant, bears little or no resemblance to the case at bar. In that case the court interrupted counsel on many occasions, asking argumentative questions and showed he was [10] prejudiced against the cause of the defendant and, as the court said: "The examination of the defendant by the trial judge is too extensive to permit its transcription here. However, on every occasion when the trial judge took over the defendant as a witness, it is clear from the record that the court's examination was an interruption of the orderly development of the case by counsel. * * * In the course of these interruptive examinations, some of the questions were improper and may be characterized as argumentive. It is stated by counsel for the defendant, and not denied by the appellee, that the trial judge exhibited an unfriendly attitude towards the defendant * * *."

As he pointed out, the examination of the witness in the present case was by questions propounded by the judge after both parties had finished the examination of the witness and showed no prejudice

and were asked to clear up and illustrate certain points not too clearly brought out in the testimony.

The other ground of alleged error was stated in several forms; these errors claimed by the defendant may be briefly stated: that the prosecution was not entitled to introduce evidence of possession by the defendant of goods alleged to have been stolen until the *corpus delicti* had been proved; that until the Territory had made out a *prima facie* case of larceny, which was for the determination of the court, evidence tending to connect the defendant with the commission of the crime was not admissible.

There is not much dispute that evidence of mere possession of stolen property cannot be admitted against the defendant without a showing of the *corpus delicti*, namely, that such property was [11] stolen.

This court, in the recent burglary case of *Territory vs. Makaena*, 39 Haw. 270, held that the rule that unexplained possession of stolen property was *prima facie* evidence of guilt does not become operative until it is shown by competent evidence that the property had been stolen. This court also set out in that case that the *corpus delicti* need not be proved by direct and positive evidence but may be proved by circumstantial evidence.

In the instant case there is ample circumstantial evidence to make out a *prima facie* case of the *corpus delicti*. We need not review this evidence in detail as sufficient facts have been set out *supra*. To repeat some of the evidence: the testimony that the complaining witness had eight \$20 bills in his wallet

in his left hand pocket and the change from \$10 after he and his friend had eaten chop suey; that the defendant had her hand in his left pocket and inside his trousers for some five or ten minutes; that after she told him to go down the alley, that she would follow him, he saw her going in the other direction; he felt in his pocket, found his money missing, chased and caught the defendant; that police officers came up and recovered from the defendant eight \$20 bills and three \$1 bills which she had in her mouth. This is sufficient to make a prima facie case of larceny.

Woods vs. People, 142 P. (2d) 386 (Colo.), was a case where the facts to establish the corpus delicti were somewhat similar to the instant case. The evidence was that immediately before the prosecution's witness discovered the loss of his wallet containing a specific number of described bills and stamps, he had seen defendant standing behind him; that the bills and [12] stamps were found in defendant's possession immediately thereafter; this evidence presented a case for the jury and justified conviction of larceny from the person. The court said that the corpus delicti may be proved by circumstantial evidence provided such circumstantial evidence is sufficiently clear to exclude any reasonable hypothesis of innocence.

In this case, as in many cases, the evidence offered to prove corpus delicti tends also to show the guilt of the accused. The authorities are clear that it is not essential that the corpus delicti should be established by evidence independent of that which tends

to connect the defendant with the perpetration of the crime; the same evidence which tends to prove one may also prove the other, so that the corpus delicti and the guilt of the defendant may stand together inseparably on one foundation of circumstantial evidence. (32 Am. Jur. 1046, 1047, and cases and annotations cited in note 19 on page 1047.)

The cases cited by the defendant, the one upon which he mainly relied being *Sanders vs. State of Alabama*, 52 So. 417, are readily distinguishable. The only evidence of the corpus delicti in the *Sanders* case was that certain goods either at one time forming part of the stock in trade of a merchant or goods like them were found in the possession of the accused without anything to show that they were stolen or were not sold in the due course of trade by some employee of the establishment (of which there were eight engaged in selling goods.)

Judgment affirmed.

/s/ EDWARD A. TOWSER,

/s/ LOUIS LE BARON,

/s/ INGRAM M. STAINBACK,

Judges.

[Endorsed]: Filed May 15, 1952.

Certified true copy. [13]

[Title of Supreme Court and Cause.]

JUDGMENT ON WRIT OF ERROR

Pursuant to the opinion of the Supreme Court of the Territory of Hawaii rendered and filed on May 14, 1952, in the above-entitled cause, the judgment of the lower court is affirmed.

Dated Honolulu, Hawaii, June 2, 1952.

By the Court:

[Seal] /s/ LEOTI V. KRONE,
Clerk.

Approved:

/s/ INGRAM M. STAINBACK,
Associate Justice.

Certified true copy.

[Endorsed]: Filed June 2, 1952. [15]

[Title of Supreme Court and Cause.]

NOTICE OF APPEAL TO NINTH CIRCUIT
COURT OF APPEALS

1. Appellant: Sable Hall.
2. Attorney: J. Donovan Flint, 95 Merchant Street, Honolulu, Hawaii.
3. Offense: Larceny.
4. Upon verdict of a jury, appellant was adjudged guilty and sentenced, which judgment was affirmed by the Supreme Court of the Territory of

Hawaii on June 2, 1952, from which judgment this appeal is prosecuted.

5. Appellant is on bail, the amount and the sufficiency of the surety being duly approved.

6. The appellant has been deprived of her rights under the Constitution to a fair and impartial trial; to be protected against double jeopardy; to the due process of law; to be informed of the nature of charges against her; not to be held to answer except by indictment, and to the equal protection of the laws.

Dated at Honolulu, Territory of Hawaii, this 12th day of June, 1952.

SABLE HALL,

Plaintiff in Error.

By /s/ J. DONOVAN FLINT,

Her Attorney.

Certified true copy.

[Endorsed]: Filed June 12, 1952. [17]

[Title of Supreme Court and Cause.]

PETITION FOR APPEAL

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the Territory of Hawaii:

Comes now Sable Hall, plaintiff in error herein, and deeming herself aggrieved by the Judgment of the Supreme Court of the Territory of Hawaii

made and entered on the 2nd day of June, 1952, pursuant to the opinion and decision of said Court made and entered on the 14th day of May, 1952, prays that an appeal may be allowed from said Judgment to the United States Circuit Court of Appeals for the Ninth Circuit; that an order be made fixing the amount of costs bond; that a duly authenticated transcript of the record and proceedings upon which said decision and judgment were made be sent to the United States Court of Appeals for the Ninth Circuit.

Dated at Honolulu, Territory of Hawaii, this 12th day of June, 1952.

SABLE HALL,
Plaintiff in Error.

By /s/ J. DONOVAN FLINT,
Her Attorney.

Certified true copy.

[Endorsed]: Filed June 12, 1952. [19]

[Title of Supreme Court and Cause.]

AFFIDAVIT IN SUPPORT OF JURIS-
DICTIONAL AVERMENT

United States of America,
Territory of Hawaii,
City and County of Honolulu—ss.

J. Donovan Flint, being first duly sworn, on oath,
deposes and says:

That he is the counsel of record for Sable Hall, Plaintiff in Error in the above-entitled cause;

That a Federal constitutional question is involved herein in that said Plaintiff in Error has been denied the due process guaranteed to her by the Fifth Amendment to the Constitution of the United States in that she was deprived of a fair and impartial trial by the trial court questioning a witness in a manner which revealed that the trial court believed the appellant to be guilty as charged and by the fact that the Territory was permitted to introduce the alleged stolen property into evidence without proof of the corpus delicti;

That from the entire record herein and particularly the decision of the Supreme Court of the Territory of Hawaii on the writ of error, it appears that the Supreme Court of the Territory of Hawaii committed manifest error as set out in the Assignment of Errors on file herein. [21]

Further affiant sayeth naught.

/s/ J. DONOVAN FLINT.

Subscribed and sworn to before me this 12th day of June, 1952.

[Seal] /s/ CLESSON Y. CHIKASUYE,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires April 18, 1955. [22]

Certified true copy.

[Endorsed]: Filed June 12, 1952.

[Title of Supreme Court and Cause.]

ASSIGNMENT OF ERRORS

Now comes Sable Hall, Plaintiff in Error above named, by her attorney, and files the following assignment of errors upon which she will rely in the prosecution of her appeal in the above-entitled matter from the Judgment entered herein dismissing her writ of error and affirming the Judgment of the trial court:

Assignment of Error No. I.

The Supreme Court of the Territory of Hawaii erred in concluding that the trial court could question witness Boyce Blyler about the facts of the alleged crime even though said questioning ipso facto revealed that the trial court believed the appellant to be guilty as charged, thereby depriving the appellant of the right to a fair and impartial trial as guaranteed by the due process clause of the Fifth Amendment to the Constitution of the United States.

Assignment of Error No. II.

The Supreme Court of the Territory of Hawaii erred in concluding that the appellant was not denied due process of law by the action of the trial court in permitting the alleged stolen property to be admitted into evidence without proof of the corpus delicti by the Territory of Hawaii.

Wherefore, Plaintiff in Error prays that judgment and decision of this cause be reversed and

the cause remanded with [24] instructions to discharge the appellant.

Dated at Honolulu, Territory of Hawaii, this 12th day of June, 1952.

SABLE HALL,
Plaintiff in Error.

By /s/ J. DONOVAN FLINT,
Her Attorney.

Certified true copy.

[Endorsed]: June 12, 1952. [25]

[Title of Supreme Court and Cause.]

BOND

Know All Men by These Presents:

That Sable Hall, of Honolulu, City and County of Honolulu, Territory of Hawaii, as Principal, and the Pacific Insurance Company, Ltd., a Hawaiian corporation, as surety, jointly and severally, are held, firmly bound and indebted to the Territory of Hawaii in the sum of Two Hundred Fifty Dollars (\$250.00), upon this condition:

Whereas, Sable Hall, principal, has taken an appeal, as plaintiff, from the Supreme Court of the Territory of Hawaii to the United States Court of Appeals for the Ninth Circuit, to reverse the judgment dated on the 2nd day of June, 1952,

Now, Therefore, if the above bounden principal,

plaintiff, shall prosecute her appeal without delay and answer for and pay all costs if the appeal is dismissed or the judgment affirmed, or pay such costs as the appellate court may award if the judgment is modified, then this obligation shall be void, otherwise to remain in full force and effect.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this 2nd day of June, 1952.

/s/ SABLE HALL. [27]

[Seal] PACIFIC INSURANCE
 COMPANY, LTD.

By /s/ L. L. THOMAS.

The foregoing bond is apprieved as to the amount and sufficiency of surety.

[Seal] /s/ LOUIS LE BARON,
 Supreme Court of Hawaii.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 2nd day of June, 1952, before me appeared L. L. Thomas, to me personally known, who being by me duly sworn, did say that he is Treasurer of Pacific Insurance Company, Ltd., the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors

and said L. L. Thomas acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ MARY LUIS,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires May 31, 1955.

Certified true copy.

[Endorsed]: Filed June 12, 1952. [28]

[Title of Supreme Court and Cause.]

ORDER ALLOWING APPEAL

Upon reading the petition filed herein by Plaintiff in Error above named for allowance of an appeal and it appearing that Notice of Appeal, together with a good and sufficient bond in the sum of \$250.00 has been filed,

It Is Hereby Ordered that the appeal in the above-entitled cause be and the same is hereby allowed; and

It Is Further Ordered, that all further proceedings in this Court be, and there are hereby, stayed pending the disposition of this appeal.

Dated at Honolulu, Territory of Hawaii, this 12th day of June, 1952.

[Seal] /s/ LOUIS LE BARON,
Chief Justice, Supreme Court of the Territory of
Hawaii.

Certified true copy.

[Endorsed]: Filed June 12, 1952. [30]

[Title of Supreme Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of record of this cause to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit, and include in said transcript the following pleadings and papers on file, to wit:

1. Indictment.
2. The verdict.
3. The transcript of the evidence at the trial.
4. Opinion and decision of the Supreme Court of the Territory of Hawaii.
5. Judgment of the Supreme Court of the Territory of Hawaii.
6. Notice of Appeal.
7. Petition for Appeal.
8. Affidavit in support of jurisdictional averment.
9. Assignment of Errors.
10. Bond.
11. Order Allowing Appeal.
12. Praecipe for Transcript of Record. [32]

Dated at Honolulu, Territory of Hawaii, this 12th day of June, 1952.

SABLE HALL,
Plaintiff in Error.

By /s/ J. DONOVAN FLINT,
Her Attorney.

[Endorsed]: Filed June 12, 1952. [33]

[Title of Supreme Court and Cause.]

ACKNOWLEDGMENT OF SERVICE

Receipt from J. Donovan Flint, attorney for Plaintiff in Error above named, of the following filed in the Supreme Court of the Territory of Hawaii in the above-entitled cause is hereby acknowledged:

1. Notice of Appeal.
2. Petition for Appeal.
3. Affidavit in support of jurisdictional averment.
4. Assignment of Errors.
5. Bond.
6. Order Allowing Appeal.
7. Praeceptum for Transcript of Record.

Dated at Honolulu, Territory of Hawaii, this 12th day of June, 1952.

TERRITORY OF HAWAII,
Defendant in Error.

By /s/ ALLEN R. HAWKINS,
Public Prosecutor of the City and County of Honolulu, Territory of Hawaii.

Certified true copy.

[Endorsed]: Filed June 12, 1952. [34]

[Title of Supreme Court and Cause.]

ORDER EXTENDING TIME TO PREPARE
AND DOCKET RECORD ON APPEAL TO
THE UNITED STATES COURT OF AP-
PEALS FOR THE NINTH CIRCUIT

Good cause being shown therefore,

It Is Ordered that the time allowed for preparing and docketing the record on appeal to the United States Court of Appeals for the Ninth Circuit be and it is hereby extended to September 10, 1952, being ninety days from the date of filing of the notice of appeal to the United States Court of Appeals for the Ninth Circuit, said notice of appeal having been filed on June 12, 1952.

Dated Honolulu, Hawaii, July 18, 1952.

[Seal] /s/ EDWARD A. TOWSE,
 Chief Justice, Supreme Court,
 Territory of Hawaii.

Certified true copy.

[Endorsed]: Filed July 18, 1952. [36]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii

Cr. No. 21118

TERRITORY OF HAWAII

vs.

SABLE HALL,

Defendant.

TRANSCRIPT OF TESTIMONY

Before: Honorable John E. Parks, Judge.

Appearances:

ROBERT ST. SURE, ESQ.,
Assistant Public Prosecutor,
Counsel for the Territory.

GEORGE Y. KOBAYASHI, ESQ.,
Counsel for the Defendant.

Wednesday, August 17, 1949—9:00 A.M.

(The Clerk called the case.)

(A jury having been empanelled and sworn to try the above-entitled cause, the following proceedings were had and testimony adduced:)

The Court: Proceed.

Mr. St. Sure: At this time, Gentlemen of the Jury, I will read the indictment in this case. The indictment reads as follows: In the Circuit Court of the First Judicial Circuit, Territory of Hawaii, January Term, 1949. The Territory of Hawaii

versus Sable Hall, Defendant. Larceny in the First Degree. Indictment. The Grand Jury of the First Judicial Circuit of the Territory of Hawaii do present that Sable Hall at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 14th day of April, 1949, did unlawfully and feloniously take and carry away certain things of marketable, saleable, assignable and available value, to wit: certain moneys in the sum and of the value of One Hundred and Sixty-three Dollars (\$163.00) lawful money of the United States of America, a more particular description of which is to the Grand Jury unknown, of the moneys and property of Boyce Plyler, the owner thereof and entitled thereto, with intent in her, the said Sable Hall, to deprive the owner aforesaid of the moneys and property aforesaid, and did then and there and thereby commit the crime of larceny in the first degree, contrary to the form of the statute in such case made and provided. A true bill found this 25th day of April, A.D. 1949. Pierre L. LeBourdais, Acting Foreman of the Grand Jury. [3*] John R. Desha, Assistant Public Prosecutor of the City and County of Honolulu. Both signing the indictment.

After a short statement of the facts, the Government will prove that on the morning of April 14th, 1949, between the hours of 1:30 a.m. and 2:00 o'clock a.m., two sailors were walking down Smith Street in the direction, mauka direction, towards

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

the mountains. The place they were walking was opposite the Beretania Park, which is at the corner of Smith and Beretania Streets in Honolulu. Two sailors, one of whom was Boyce Plyler, the other one was Jackson. These two men were walking down Smith Street. They passed a place called Ruby's Shoeshine Shop. It is on the ewa side of the street, looking mauka on Smith Street. As the sailors passed Ruby's Shoeshine Shop, Sable Hall came out, went up to one of the sailors, Boyce Plyler, and called him aside. The boy had been drinking. We will prove that he had been feeling high.

This woman reached in the region of his penis, began playing with it on the outside of his pants, and at the same time, we will prove, she pulled his purse out of his pocket and took \$163.00 from his wallet. After taking his money she left and went up the street toward Beretania Street.

At the time of the taking, we will show, the sailor did not know of it, but looking from the corner of Smith Street up towards Beretania Street, where the defendant met some other colored people, the sailor suspicioned that something was wrong, pulled out his wallet and found his money missing.

He pursued the defendant until she went into Kaumakapili Lane on Beretania Street. The sailor and his friend went into the head of the lane, and the sailor grabbed the [4] defendant's arm and asked for his money. She said she didn't have it. The commotion caused by this incident led a policeman, who was on duty at a nearby corner, to come

across the street and investigate. He rounded up all of them, including the other negroes, the three negroes who were with the defendant, and brought them to the corner of Nuuanu and Beretania, where he knew another officer was stationed. At this time the sailor complained that his pocket had been picked. The defendant refused to say anything to the complaint. She had her hand over her mouth. One of the officers asked her to open her mouth. As she did so she bent over and spit into her hand, and in making her open her hand the officer found the \$163.00 in her hand. We will prove that it had been in her mouth, in the mouth of the defendant.

The defendant and the other witness, the other people, were taken to the Police Station. The defendant refused to say anything more to the complaint. She told the officers she knew nothing about the complaint, that there was no complaint. The sailor again identified the defendant down at the Police Station, and after you hear the evidence from the witnesses, gentlemen of the jury, you will have to return a verdict of guilty. Thank you.

The Court: Do you wish to make an opening statement, Mr. Kobayashi?

Mr. Kobayashi: We reserve the opening statement.

Mr. St. Sure: Our first witness is Officer Schwartzman.

CLIFFORD H. SCHWARTZMAN

called as a witness for and on behalf of the Territory, [5] being first duly sworn, testified as follows:

Direct Examination

By Mr. St. Sure:

Q. State your name, please.

A. Clifford H. Schwartzman.

Q. Will you spell it, please?

A. S-c-h-w-a-r-t-z-m-a-n.

Q. What is your occupation?

A. Police officer, Honolulu Police Department.

Q. Calling your attention to the date April 14th, 1949, I am referring to the morning of April 14th, 1949, were you in the vicinity of Smith and Bere-tania Streets in Honolulu? A. I was.

Q. What were you doing there, Officer?

A. I was on duty at that time, patrolling the area.

Q. What were the hours of your duty there?

A. At that time it was about 1:45 a.m. We were on duty from midnight to 8:00 in the morning.

Q. Did you see the defendant, Sable Hall, there that night? A. I did.

Q. Is she in the courtroom here? A. Yes.

Q. Point her out.

A. (Witness indicating the defendant): That is Sable Hall.

Mr. St. Sure: May the record show that the witness identifies the defendant, Sable Hall?

Q. Will you step down from the chair there, Officer Schwartzman, and the Bailiff can get the

(Testimony of Clifford H. Schwartzman.)

blackboard. Officer Schwartzman, can you draw a rough sketch of Smith and Beretania Streets on the blackboard? [6]

A. Yes. (Whereupon Officer Schwartzman drew a diagram on the blackboard.)

Mr. Kobayashi: May I inquire whether Officer Schwartzman is being put on the stand just for the purpose of drawing this sketch?

Mr. St. Sure: Yes.

Witness (Indicating points on the diagram he drew on the blackboard): This is Waikiki, this is Beretania. We will call this Smith Street running mauka——

The Court: Can all the jurors see that sketch?

(No response.)

Witness (Continuing): This is Kaumakapili Lane. This is Beretania Park. That is——

Mr. Kobayashi: I object to that location being put on. What is 1190? I object to that.

Mr. St. Sure: That is to be properly identified later on.

The Court: If the Officer can connect it up the Court will reserve ruling.

Mr. St. Sure: Point it out.

Witness (Continuing): This is Beretania Street, ewa direction, Waikiki direction. This is Smith Street, running mauka. This is Beretania Park. This is Kaumakapili Lane. This 1190 Smith Street is the location of Ruby's Bootblack Stand where the alleged larceny took place.

(Testimony of Clifford H. Schwartzman.)

Mr. Kobayashi: I object to that statement by the Police Officer. He has been put on out of order. He is put on the stand just for the purpose of drawing that map. I move that the last statement of the Police Officer be stricken.

The Court: Mr. Kobayashi, he said this is what 1190 Smith Street represents. [7]

Mr. Kobayashi: That is all right up to there——

The Court: Where the alleged larceny took place.

Mr. Kobayashi: I moved that be stricken.

The Court: He said "alleged."

Mr. Kobayashi: He is out of order, even if he uses that term "alleged" or not. I don't think it is a proper statement by a police officer. He is put on out of order just to draw a map of the location of the place.

The Court: In view of how he has connected it all up in the use of the word "alleged" I think that it is proper.

Mr. Kobayashi: May we save an exception?

The Court: Yes.

Mr. St. Sure: Those are all the questions I have.

Mr. Kobayashi: I have no questions.

The Court (To the witness): You are excused. Thank you.

Mr. St. Sure: The next witness is Boyce Plyler.

BOYCE PLYLER

called as a witness for and on behalf of the Territory, having been first duly sworn, testified as follows:

Direct Examination

By Mr. St. Sure:

Q. State your full name for the record please.

A. Boyce Plyler.

Q. How do you spell your last name?

A. P-l-y-l-e-r.

Q. What is your present address, Mr. Plyler?

A. Receiving Station, Pearl Harbor.

Q. Are you attached to any branch of the Armed Services? A. Yes. Navy. [8]

Q. What is your rank? Where are you stationed?

A. At the Pearl Harbor Navy Yard at the present.

The Court: Talk loudly enough so all those gentlemen back there can hear you, please.

Q. Now, Mr. Plyler, calling your attention to the date, April 14th, 1949, were you in the vicinity of Smith and Beretania Streets in Honolulu?

A. Yes.

Q. When did you get to Honolulu on that day I have just mentioned? A. About 8:30.

Q. Start from the beginning and tell the Court and jury what happened.

A. I came in by plane from Midway, and landed at John Rodgers Field around 8:30. I caught a cab and went to the Receiving Station and checked

(Testimony of Boyce Plyler.)

out with the O.D. Then we came into town. On the way to town we stopped and bought a bottle, came on in and went to the Leonard Hotel and got a room. We went down to Yee Hop on Beretania Street and stayed there until it closed, then we went over on Hotel Street to a little Chop Suey place over there, and coming down Smith Street to Beretania Street where I met Sable Hall. She stopped me and asked me if I wanted a wahine. I kept on walking. She grabbed me by the arm and started feeling me up.

Q. What do you mean by "feeling you up"?

A. Playing with my penis and everything.

Q. Go on, what happened next, if anything?

A. So she told me to meet her down the street. She played with me between five and ten minutes. She told me to go on down the street and she would follow, so I turned the corner [9] at Beretania and Smith and she went the other way with another couple. I looked in my wallet. I seen this one man looking as if he was putting something in his pocket across the street. I looked in my wallet and there was nothing in there. I told the guy with me I had been rolled. We ran across the street. She turned down an alleyway—

The Court: Can you gentlemen away down there hear this witness?

Mr. St. Sure: Talk a little louder, please.

A. (Continuing): I ran down the alleyway and caught her by the arm, and told her to give me my

(Testimony of Boyce Plyler.)

money back. She told me she didn't have it. Then the officer came running up.

Q. Then what happened?

A. We went up to the corner. He called the patrol wagon and everything, and we went down to the Police Station.

Q. Were you alone, or were you with someone else? A. I was with someone else.

Q. Who was that person, do you know his name?

A. Jackson.

Q. Who is Jackson?

A. The guy who was with me. He is on Midway now.

Q. Another sailor? A. Yes.

Q. Where is he now? A. On Midway.

Q. Now, can you identify the person you say—you allege took your wallet?

A. Yes, this is her. (Witness indicates the defendant.)

Q. This person here (indicating the defendant)?

A. Yes. [10]

Mr. St. Sure: May the record show that the witness, Boyce Plyler, identifies the defendant?

Q. Now, on the night of April 14th, 1949, did you have any money on your person?

A. Yes.

Q. That is before you met the defendant?

A. Yes.

Q. How much money did you have?

A. I had \$160.00 in my wallet.

Q. What kind of a wallet did you have?

(Testimony of Boyce Plyler.)

A. Black zipper wallet.

Q. Did you have any other money on your person?
A. Yes.

Q. Where did you have the other money?

A. I had it in my shirt pocket.

Q. What?

A. I had the money in my shirt pocket.

Q. How much?

A. Change from a ten-dollar bill. I don't know exactly how much.

Q. On that night, April 14th, 1949, how were you dressed?
A. In civilian clothes.

Q. Describe your dress to the court and jury, please.

A. I had on a sport shirt and a regular pair of pants.

The Court: Talk louder.

A. I had on a sport shirt and civilian pair of pants.

Q. How was Jackson dressed?

A. He was dressed the same, sport shirt.

Q. Where did you have your wallet and money at the time you went down Smith Street?

A. In my left front pocket. [11]

Q. Whose money was that?

A. It was mine.

Q. Was it paper money, or otherwise?

A. Paper money.

Q. Can you describe it?

A. Yes. All twenty-dollar bills.

Q. How many twenty-dollar bills?

(Testimony of Boyce Plyler.)

A. Eight.

Q. Did you give the defendant, Sable Hall, any money that night of April 14th, 1949?

A. No.

Q. Did you give Jackson any money?

A. No.

Q. Were you drunk on the night of April 14th, 1949? A. Yes.

Q. How many drinks did you have?

A. I don't know.

Q. Few or many? A. In between.

Q. Were you sober?

A. Well, I was feeling my drinks.

Q. Was the defendant, Sable Hall, on the night of April 14, 1949, alone or with someone else?

A. She was alone when I met her. After she left me she went to two guys and another woman.

Q. Tell the court and jury where they were.

A. They were walking down Beretania Street.

Q. Do you know where they came from?

A. Yes, out of the shoeshine stand.

Q. Were they men or women? [12]

A. Two men and one woman.

Q. Did you notice their racial background?

A. Beg your pardon?

Q. Do you know the nationality—the race of those people? A. Yes, they were negroes.

The Court: Speak as loudly as you can. All those gentlemen have to hear you.

Q. Now, Mr. Plyler, do you see the blackboard here? A. Yes.

(Testimony of Boyce Plyler.)

Q. We have here a drawing of Beretania Street and Smith Street, and a lane here. Can you orient yourself to the drawing? Do you know where it is?

A. I know where it is.

Q. Please step down to the drawing.

(Whereupon the witness stepped down to the blackboard.)

Q. Take this green stick and stand a little to the side, and point out to the court and jury the location of the shoeshine stand first.

A. Right here (indicating a point on the blackboard). This is the shoeshine stand here.

Q. What were the conditions as to lighting on that morning of April 14, 1949?

A. I could see. The street light gave plenty light.

Q. Will you point out to the court and jury the exact spot where you first met Sable Hall, the defendant?

A. Right opposite the shoeshine stand.

Q. Did she talk to you at that time?

A. Yes.

Q. What did she say, if anything?

A. She was asking me if I wanted a woman. [13]

Q. Will you take this chalk and mark the spot where you met her and talked with her.

A. Right here. (Witness marks the spot on the blackboard.)

Q. Were you alone at the time?

A. No, I was with Jackson.

(Testimony of Boyce Plyler.)

Q. Where was Jackson? Point out where Jackson was.

A. Jackson walked on down to the corner of Beretania Street.

Q. What happened after that?

A. (Witness indicating different points on the blackboard.) She walked on down here and crossed the street, walking up Beretania. I was here at the corner with Jackson. I looked in my wallet. I seen there was no money there. I told Jackson I had been rolled. I ran after her. She turned down this alleyway and the other couple walked on up the street.

Q. Did this other couple say anything to you folks? A. No.

Q. Did the defendant yell or holler at any time? A. No.

Q. This all happened in the City and County of Honolulu, Territory of Hawaii? A. Yes.

Q. Did you talk with these other colored people that were with Sable Hall? A. No.

Q. Do you know whether Jackson talked to them or not? A. I don't know.

Q. The money you had was United States money, currency? A. Yes.

Q. I don't know whether I asked you, what time of morning [14] was it when this alleged larceny happened?

A. It was around 2:00 o'clock in the morning.

Q. What had you been doing before then, before you got to Smith Street? A. Drinking.

(Testimony of Boyce Plyler.)

Q. Was Jackson drinking, too?

A. Yes.

Q. Now, on the corner of Beretania and Nuuanu Street, when the officers arrived, did you see anything unusual about the defendant?

A. The officer asked her what she had in her mouth. She had her hand up like this (witness demonstrating). She said "nothing in my mouth."

Q. Did you look at her face?

A. I seen her in the face. I was looking her in the face.

Q. Was there enough light?

A. Plenty of light.

Q. Did you see anything unusual?

A. She had an odd shape in her mouth as if she had something in it.

Q. Did you identify the defendant down at the Police Station in Honolulu? A. Yes.

Q. Is this the same woman present in court today? A. Yes.

Mr. St. Sure: Your witness.

Cross-Examination

By Mr. Kobayashi:

Q. Mr. Plyler, you say when you were coming out from Pearl Harbor to Honolulu you bought a bottle, is that right? [15] A. Yes.

Q. What kind of bottle? A. Whiskey.

Q. And the brand, Bourbon?

A. Whiskey. I don't know what kind.

Q. Just whiskey? A. Yes.

(Testimony of Boyce Plyler.)

Q. Quart bottle? A. Four-fifths.

Q. What happened to that bottle, did you drink it all?

A. We took it to the hotel room, and left it in the hotel room.

Q. Never took a drink?

A. Yes, we took a drink.

Q. How much of that bottle did you drink?

A. Maybe two drinks.

Q. After you went to this Yee Hop you had more to drink? A. Yes.

Q. When you left Pearl Harbor how much money did you have? A. \$170.00.

Q. \$170.00? A. Yes.

Q. You are sure of that? A. Positive.

Q. What denominations were they?

A. I had eight twenties and a ten.

Q. Is that all the money you had with you?

A. That was all the money I had with me.

Q. Who paid for that bottle of liquor?

A. Jackson. [16]

Q. When you checked in at the Leonard Hotel, who paid the hotel bill? A. Jackson did.

Q. When you went to Yee Hop, who paid for that?

A. That is where I broke the Ten Dollar bill.

Q. How much did you spend at Yee Hop's?

A. I don't know.

Q. You don't know? A. No.

Q. How many drinks did you have at Yee Hop's?

A. I don't know that either.

(Testimony of Boyce Plyler.)

- Q. You don't remember that? A. No.
- Q. One or two?
- A. Three or four. Maybe more.
- Q. Whiskey? A. No, beer.
- Q. Who paid for those drinks? A. I did.
- Q. You did? A. Yes.
- Q. You don't know how much you paid for those beers? A. No.
- Q. You don't know what the bill was?
- A. No.
- Q. Later on where did you go, after Yee Hop's?
- A. We went up to a little Chop Suey place on Hotel Street.
- Q. Do you know the name of the place?
- A. No.
- Q. Did you have anything to eat? [17]
- A. Yes, I had something to eat.
- Q. Anything to drink?
- A. Nothing to drink.
- Q. What did you eat? A. Chop Suey.
- Q. Did you just order chop suey? A. Yes.
- Q. Who paid for that?
- A. I paid for mine. Jackson paid for his.
- Q. You paid for yours out of the change from the Ten Dollar bill you broke at Yee Hop's?
- A. Yes.
- Q. You had all that change in your shirt pocket?
- A. Yes, in my shirt pocket.
- Q. You had \$170.00 when you left Pearl Harbor, eight twenties and one ten, and when you got to Yee Hop you took the Ten Dollars and paid for the

(Testimony of Boyce Plyler.)

drinks, then your share of the chop suey, and kept the change in your shirt pocket, is that right?

A. Yes.

Q. Now, you say you met the defendant on Smith Street, is that right? A. Yes.

Q. At that time where did you have your wallet?

A. In my left front pocket.

Q. You say you talked to the defendant about five minutes, is that right?

A. Five to ten minutes, yes.

Q. Then the defendant left you, or you left the defendant, and you reached in your pocket for your wallet, is that right? A.. Yes. [18]

Q. At that time you found no money in your wallet? A. That's right. No money.

Q. When was the last time you looked in your wallet before that time?

A. When I left the hotel.

Q. When you left the hotel? A. Yes.

Q. Was that the last time?

A. The last time. I never had my wallet out of my pocket.

Q. What did you do in the hotel when you looked at it?

A. Counted out my money and put my wallet in my pocket.

Q. Put everything back, the whole \$170.00?

A. No, I put \$160.00 back, and \$10.00 in my shirt pocket.

Q. When you were standing on the corner of Smith and Beretania, with Jackson, at that time

(Testimony of Boyce Plyler.)

the only money you had was what you had in your shirt pocket, is that right? A. Yes.

Q. How much was in your shirt pocket?

A. Two or three dollars.

Q. Let me get this straight: You went to the Leonard Hotel? A. Yes.

Q. And that was the last time you looked in your pocket book?

A. Yes, the last time.

Q. You had \$170.00 exactly? A. Yes.

Q. You pulled out a Ten Dollar bill and put it in your shirt pocket? A. That's right. [19]

Q. Stuck your wallet in your pocket and never looked at it again?

A. Never looked at it again.

Q. And when you took out your wallet on Beretania and Smith Streets there was no money in there, is that right—on Beretania and Smith?

A. That's right.

Q. All you had in your pocket was a couple of dollars? A. That's right.

Q. Two or three dollars, you don't know the exact amount?

A. I don't know the exact amount.

Q. As far as you know, you don't know who took your money, of your own knowledge?

A. Of my own knowledge I don't.

Mr. Kobayashi: No further questions. That is all.

The Court: Any further questions?

Mr. St. Sure: Yes, your Honor.

(Testimony of Boyce Plyler.)

Redirect Examination

By Mr. St. Sure:

Q. At the time you took the wallet out to look at it, was the zipper to the wallet open or closed?

A. Open.

Q. At the time of this theft of your money—

Mr. Kobayashi: I object to the word "theft." There is no proof of theft. Loss of money, that is all there was. He admits that. From the evidence here there is no ground for the Prosecution to use the word "theft" here.

The Court: In view of the testimony adduced so far I think that is permissible.

Mr. Kobayashi: The word "theft"?

The Court: Yes. [20]

Mr. Kobayashi: May we save an exception?

The Court: Yes.

Q. (By Mr. St. Sure): Now, at the time that money was taken on the morning of April 14th, 1949, did you see anyone beside you at that time except the defendant? A. No.

Mr. St. Sure: No further questions.

Mr. Kobayashi: No questions.

The Court: I have a few questions to ask you.

Q. (By the Court): Did you give Sable Hall permission to take any money from you that night?

A. No.

Q. You say that she was playing with your penis when you first met her, is that right?

A. That's right.

(Testimony of Boyce Plyler.)

Q. Step down and show the jurors what she was doing, where her hands were, outside your clothing, or inside your clothing.

Mr. Kobayashi: May we take an exception to the Court's line of questioning?

The Court: Yes, you may have an exception.

Q. (By the Court): Do you understand the question? A. Yes.

Q. Step down and show the jurors where her hands were. Were her hands outside your clothes?

A. One was inside and one in my front pocket.

Q. Which pocket? A. Left front pocket.

Q. Show the jurors the best you can.

A. (Witness demonstrates to the jury.) She had one hand [21] in here and the other one in my left front pocket. She was standing facing me.

The Court: All right, you can take the stand again.

Mr. Kobayashi: May my exception go to all the questions of the Court?

The Court: Yes.

Q. (By the Court): When you put the money in the wallet, you say you put \$160.00 in the wallet?

A. Yes.

Q. Did you close your zipper when you put your money in there? A. I don't remember.

Q. Which pocket did you put your wallet in?

A. My left front pocket.

The Court: That is all. Any further questions?

Mr. Kobayashi: No questions.

Mr. St. Sure: No questions. Call Officer Henry Guigni.

HENRY K. GUIGNI

called as a witness for and on behalf of the Territory, being first duly sworn, testified as follows:

Direct Examination

By Mr. St. Sure:

Q. State your full name, please.

A. Henry K. Guigni.

Q. What is your occupation, officer?

A. Member of the Honolulu Police Department.

Q. Do you know Sable Hall, the defendant in this case? A. I do. [22]

Q. Point her out in the courtroom.

A. (Indicating the defendant.) The woman in the green dress.

Q. Calling your attention to the date April 14th, 1949, did you see the defendant on that date?

A. I did.

Q. Where did you see her?

A. On Beretania and Kaumakapili Lane.

Q. Is that in the City and County of Honolulu?

A. It is.

Q. What hour of the day or night was it?

A. 1:45 in the morning.

Q. Did you at that time and place see a sailor by the name of Boyce Plyer, the man who was just on the witness stand? A. I did.

Q. Tell the Court and jury just what happened when you saw these people on April 14th, 1949, at the alleged hour, 1:45 a.m.?

A. About five minutes prior to that I was stand-

(Testimony of Henry K. Guigni.)

ing on the corner of Nuuanu and Beretania. I had that beat that night. I was foot man. I started to walk toward Smith Street. Just as I approached that Lane I saw some people scuffling. I ran over there and I remember the sailor said "I have been robbed." Being at the time a very new officer, I collected everyone that was there and took them back to the corner of Nuuanu and Beretania, where I knew Officer Schwartzman was, and turned them over to Officer Schwartzman.

Q. You say you rounded up some other people, too? A. I did.

Q. Will you describe those people?

A. An elderly colored woman. She owned the shoeshine stand [23] on Smith Street, another colored fellow, and another sailor.

Q. Was there anybody else there?

A. That is all I can recall.

Q. Did the defendant say anything to you?

A. She did not. She had kept holding her mouth.

Q. Describe that to the Court and jury.

A. She kept holding her mouth and mumbling, holding her jaw. After I turned them over to Officer Schwartzman he questioned her. He was talking to her. I pulled everyone aside and kept them away from the defendant.

Q. Then what happened, Officer?

A. Then I waited for the matron to arrive. When I went back to talk to Schwartzman I noticed he had some money in his hand. We went down to

(Testimony of Henry K. Guigni.)

the Station and we counted out the money, and there was \$163.00, eight Twenty Dollar bills and three Dollar bills, and we took the numbers of each bill.

Q. What do you mean?

A. The serial numbers of each of the bills.

Q. Who noted down the serial numbers of the bills?

A. Officer Schwartzman. I read them off and Officer Schwartzman typed it out.

Q. That was down at the Police Station?

A. It was.

Mr. St. Sure: No further questions.

Mr. Kobayashi: No questions.

The Court: You are excused. Thank you. The Court will take a short recess.

(Recess.)

The Court: The record will show the jury are all [24] present, and the defendant. Proceed.

Mr. St. Sure: I will recall Officer Schwartzman.

CLIFFORD H. SCHWARTZMAN

recalled as a witness for and on behalf of the Territory, having been heretofore duly sworn in this cause, testified further as follows:

Direct Examination

By Mr. St. Sure:

Q. Please state your name for the record again.

A. Clifford H. Schwartzman.

Q. You have already been sworn in?

(Testimony of Clifford H. Schwartzman.)

A. Yes, I was.

Q. You are a police officer of the Honolulu Police Department? A. Correct.

Q. On the morning of April 14th, 1949, were you in the vicinity of Beretania and Smith Streets in Honolulu? A. I was.

Q. Were you on duty that morning?

A. Yes, sir.

Q. What were your hours of duty?

A. Midnight to eight in the morning.

Q. And on the alleged date, April 14th, 1949, did you see the defendant, Sable Hall?

A. I did.

Q. Did you see the sailor named Plyler?

A. Yes.

Q. He is the sailor who testified here previously?

A. Yes.

Q. Tell the Court and jury just what happened on the alleged date, April 14th, 1949? [25]

A. Well, I was called to the corner of Nuuanu and Beretania Street by Officer Guigni. He had along with him this defendant, Sable Hall, another negro woman, a negro male, the complainant in this case, Plyler, and another sailor friend of his, and Guigni told me that this sailor, Plyler, had made a complaint of having some money taken from him.

Mr. Kobayashi: Was the defendant present at that time?

A. She was. Officer Guigni said Plyler had made a complaint of having money taken from him by this defendant. At the time the group was there

(Testimony of Clifford H. Schwartzman.)

on the corner I noted this defendant. She had a bulge in her mouth, and I asked her what she had in her mouth, and she gave no answer. I continued to ask her questions and she would make no answer whatsoever. So we questioned the sailor a little bit about what had taken place and everything, and at that time I placed this defendant under arrest for suspicion of larceny, and continued to ask her what she had in her mouth. At that time she bent over and removed what was in her mouth and put it in her hand. When she took her hand away from her mouth I seen it was a wad, looked like money, it was green paper. I asked her to open her hand and she opened her hand and I took money out of her hand. It was \$163.00; there were eight twenty dollar bills, and three one dollar bills. In the meantime we had called for the police patrol wagon, with the matron, and they arrived about that time, and all the parties there were taken to the Station, with this other colored male and colored woman. It didn't seem at that time that they were involved in this case, so we asked them to come of their own accord. They agreed. They came down, so we all went down to the Station. [26]

Q. There was the colored male and the woman besides the defendant? A. Yes.

Q. There were not two colored males?

A. No, sir.

Q. Did these colored people that were there, did they say anything to you?

(Testimony of Clifford H. Schwartzman.)

A. They did. They said they did know what it was all about. They had just closed up the shoe-shine parlor, and they were on their way home, and they happened to meet Sable Hall on the street and they were walking along with her.

Q. Did Sable Hall say anything to you?

A. She didn't say anything.

Q. At any time? A. At no time.

Q. Did the sailor say anything to you?

A. Which sailor?

Q. The sailor Plyler? A. He said——

Mr. Kobayashi: Where was this, the time and place.

Mr. St. Sure: Withdraw that question.

Q. At the time you had the defendant on the corner of Nuuanu and Beretania, you said she had a wad of money in her mouth, or what appeared to be money, did the sailor, Plyler, say anything to you? A. Yes, he did.

Q. What did he say?

A. He told us how he and his friend were walking along Smith Street when they were approached by this defendant, [27] and they stood on the street there in the vicinity of 1190 Smith Street.

Mr. Kobayashi: I object to this line of questioning. The man himself, the complainant, testified. The best evidence is the man himself. He testified a little while ago.

The Court: But since the defendant was present at the time, if he wishes to bring it out the Court will allow it.

(Testimony of Clifford H. Schwartzman.)

Mr. Kobayashi: What is the purpose? The complainant is right here, unless the Prosecution is trying to impeach its own witness.

The Court: I suppose it is to corroborate his testimony.

Mr. St. Sure: That's it.

The Court: He told us how the defendant had approached him. They had a few words there and this defendant started touching him all over the body, and then had walked away. Then he had missed his money, and then he ran up Beretania Street after her and then he caught her and asked her if she had taken his money, and there was some sort of commotion there and Officer Guigni went to the scene. I believe the sailor caught her at Kaumakapili Lane and Beretania.

Q. (By Mr. St. Sure): Going back to this money, Officer Schwartzman, what happened to the money?

A. When I took the money from her hand it was in my possession all the time. When I returned to the Police Station I made an evidence report, and we took down the serial numbers of the money. Officer Guigni read off the [28] numbers and I typed them on the report. Then they were sealed in an envelope and turned over to the Desk Lieutenant, and locked in a safe.

Q. Have you that money with you now?

A. I have the money.

Q. Please give it to me.

(Testimony of Clifford H. Schwartzman.)

A. (Whereupon the officer, the witness, handed to the Prosecutor an envelope.)

Mr. St. Sure: May this envelope containing what appears to be money be marked for identification as Prosecution's Exhibit 1 for identification?

The Court: Yes, it may be marked Prosecution's Exhibit 1.

(The envelope above referred to was received and marked Prosecution's Exhibit 1 for identification.)

Q. Down at the Police Station did you talk to the defendant at any time? A. No, I didn't.

Q. I show you officer—just a minute while I show this exhibit to counsel.

(Whereupon the Prosecutor handed to counsel for the defendant Prosecution's Exhibit 1 for identification.)

Q. I show you Prosecution's Exhibition 1 for Identification, which I hand you, will you please identify the exhibit. What is in there, officer?

A. \$163.00.

Q. Where did you get it?

A. I took it from the defendant on the night in question.

Q. Have you the serial numbers?

A. I had the serial numbers. [29]

Q. You have it here? A. Yes.

Q. On a paper? A. On a paper, yes.

Q. Please show it.

(Testimony of Clifford H. Schwartzman.)

A. (Witness submits a piece of paper.) This is the paper with the serial numbers.

Q. You typed it down personally?

A. Yes.

Q. Read it off.

A. Item 1: Eight \$20.00 bills in U. S. currency, \$160.00. The first one L, as in Los Angeles, 93227470-A, as in Albany. No. 2, L, as in Louisiana, 01231821. The third one, L, as in Los Angeles, 31655647-A, as in Albany. 4. L, as in Los Angeles, 77333525-A, as in Albany. 5. L-52269556-A. 6. L-86678099-A. 7. L-98502843-A. 8. L-18108741-B, as in Boston. Item No. 2, three \$1.00 bills, the first, N, as in Nevada, 50079303-D, as in Denver. The second one, C, as in Chicago, 682858547-D, as in Denver. The third one, W, as in Washington, 837318198-D, as in Denver. A total of \$163.00.

Q. Did you check the numbers with the serial numbers of the bills?

A. They were checked after this was read off to me. I checked them again.

Q. Did they correspond? A. They did.

Q. Now, this is the money you say you took from the hand of Sable Hall, the defendant in this case?

A. Yes. [30]

Q. On the night of April 14th, 1949?

A. Yes, sir.

Mr. St. Sure: At this time we offer Prosecution's Exhibit 1 for Identification in evidence as Prosecution's Exhibit 1.

The Court: Any objection?

(Testimony of Clifford H. Schwartzman.)

Mr. Kobayashi: We object under the theory that the only way money can come in is when money has been properly marked. That doesn't mean the officer hadn't seen the money and marked the money in order to be received. In this sort of a case money has to be properly marked, but not as here in this case when there is just an inference, because of the possession of money, that there has been a larceny committed. I think I have authorities to that effect. I don't remember what the section is, but I remember there is such a section. I am trying to get the book now, Wigmore on Evidence. It cannot be received except where the money is marked, not because there is an inference of larceny by the money being in the possession of this defendant.

The Court: There is evidence——

Mr. Kobayashi: There will be if the money is received. We have nothing else here except possession of the money by the defendant.

The Court: Let me ask one or two questions before I rule on this objection.

Questions by the Court:

Q. The envelope here contains bills you identified, Prosecution's Exhibit 1 for Identification, which I now show you, Officer. When you got the currency, as you say, from [31] the defendant's, Sable Hall, hand on this particular night in question, what did you do with it?

A. I put it in my pocket.

Q. What did you do after that?

A. I had it with me all the time until this Evi-

(Testimony of Clifford H. Schwartzman.)

dence Report was made out, and then I turned it in.

Q. You had it in your possession at all times from the time you took it from the defendant's hand at the place where you picked up these people?

A. Yes, sir.

Q. After that you made out an Evidence Report?

A. Yes, sir.

Q. You took the money out of your pocket, did you? A. Yes, sir.

Q. How did you make out the Evidence Report?

A. The money was on the table. I was at the typewriter. Officer Guigni was next to me. He took the money and he read off the serial numbers as I typed them. Then he laid the bills on the table. After we finished each one I took the bill and rechecked the serial numbers.

Q. Was that money in your presence all the time——

A. All the time.

Q. (Continuing): When this other officer was reading off the numbers to you? A. Yes.

Q. After you had the numbers read off you typed them on that piece of paper?

A. As he was reading them off I was typing.

Q. (Indicating a paper in the hands of the witness): That is the piece of paper you typed them on? [32] A. Yes, sir.

Q. You checked that? A. Yes.

Q. To make sure they were called off correctly?

A. Yes.

Q. After that what did you do with the money?

(Testimony of Clifford H. Schwartzman.)

A. The money was sealed in this envelope and turned over to Lt. Kennedy. He signed for the money at the time the envelope was sealed.

Q. This money you have brought into court, which the Court has marked Prosecution's Exhibit 1 for Identification, is the money you took from the defendant, Sable Hall? A. Yes, sir.

Mr. Kobayashi: Ordinarily money is not admissible in evidence. There are two exceptions to that; one, if there is proof here that the defendant before, just immediately prior to that, didn't have that amount of money, and has a sudden wealth after that, it might be permissible on that ground. The other ground is where the money has been properly identified before hand. Those are the only two exceptions where money can be admitted in evidence. That is Wigmore, section 164, in larceny cases.

The Court: The Court will overrule your objection.

Mr. Kobayashi: May we save an exception.

The Court: Yes. The money and envelope is received in evidence as Prosecution's Exhibit 1, in one exhibit.

(The envelope and currency above referred to were received in evidence and marked Prosecution's Exhibit 1.) [33]

Mr. St. Sure: I have no further questions.

Mr. Kobayashi: Just one question.

(Testimony of Clifford H. Schwartzman.)

Cross-Examination

By Mr. Kobayashi:

Q. Did you actually see the money come out of the defendant's mouth into her hand?

A. Yes, sir.

Q. Although she bent over taking it out?

A. Yes.

Q. Was this on Beretania and Smith Streets?

A. No.

Q. Beretania and Nuuanu Streets?

A. Yes, sir.

Q. When was the first time you saw the defendant in the alley there?

A. Not in the alley, no. At the corner of Nuuanu and Beretania.

Q. The defendant all along, she didn't say anything? A. Nothing was said by her.

Q. How long was the defendant detained in the Police Station? A. I don't know.

Q. Don't you remember? A. No.

Q. When was she taken to the Police Station, do you know? A. That same morning.

Q. April 14th? A. Yes, sir.

Q. Do you remember when she was charged and released? A. No, I don't. [34]

Q. Who did the charging?

A. I don't know. I believe it was Detective Lum.

Q. Is that Joe Lum?

A. I don't know the person.

(Testimony of Clifford H. Schwartzman.)

Mr. Kobayashi: That is all. No further questions.

The Court: Just a moment. I have some questions.

Q. (By the Court): Did you ask Sable Hall any questions that night?

A. Yes, sir. I asked her if she wanted to say anything, and she didn't want to say anything. She wanted to talk to her attorney. That is what she told be to do, talk to her attorney. I asked her if she wanted to make a denial. She said to talk to her attorney.

Q. You asked her questions all along and she didn't say anything?

A. Yes, sir.

Recross-Examination

By Mr. Kobayashi:

Q. As a policeman you know she has a perfect right any questions when you talked to her?

A. Yes, sir.

Mr. Kobayashi: That is all.

The Court: Any more witnesses.

Mr. St. Sure: I would like to recall Officer Henry Guigni.

OFFICER HENRY GUIGNI

recalled as a witness for and on behalf of the Territory, having been heretofore duly sworn, testified further as follows:

The Court: You have already been sworn. [35]

Direct Examination

By Mr. St. Sure:

Q. Officer Guigni, on the night of April 14th, 1949, at the hour of 1:45 a.m., I think you testified you heard a commotion on Kaumakapili Lane off Beretania Street?

A. It was not in the Lane. It was on Beretania Street itself, but by Kaumakapili Lane.

Q. At the time you arrived did you go up to the Lane itself? A. Yes.

Q. Can you point it out on the board?

A. Yes. (Witness indicates a point on the blackboard.)

Q. Tell us what you saw and what happened?

A. (Indicating a point on the blackboard.) I take it this is Nuuanu, and this the side street. I was walking from here to here, taking this as the road and the cross-walk. The scuffling was right here. I came across the street, and I pulled everyone here. Two people—I believe two, that were with Miss Hall, started to walk this way, away from there, so I called them back and took them all together.

Q. What were those other two people that were walking away, what were they doing?

(Testimony of Officer Henry Guigni.)

A. It just seemed as if they wanted to get away from the scene.

Q. Who was scuffling?

A. Mr. Plyler and Miss Hall.

Q. Did you see the other sailor?

A. He was standing by.

Q. Did you hear the sailor say anything, that is Plyler?

A. Plyler claimed he has been robbed—been rolled.

Q. Did Sable Hall say anything? [36]

A. No, I didn't hear her say anything. She had something in her mouth and kept holding her jaw as if she had a toothache.

Mr. St. Sure: No further questions.

Mr. Kobayashi: No questions.

The Court: Do you have any further evidence?

Mr. St. Sure: That is the case for the Government, your Honor.

Mr. Kobayashi: I move for a directed verdict, on the ground that there is a fatal variance between the allegation and the proof.

The Court: What is the ground?

Mr. St. Sure: If there is going to be an argument, may I suggest the jury be excused?

The Court: Yes, the jury may be excused.

(Whereupon the members of the jury left the courtroom.)

Mr. Kobayashi: The allegation in the indictment is that there has been a sum of \$163.00 stolen

from the person of Boyce Plyler, and the proof here is, and that came directly from Boyce Plyler, that he only had \$160.00 in his wallet. The defendant is charged with larceny of \$163.00. We believe that is a fatal variance, that under all the rules of criminal law that is a very fatal variance. Secondly, there has been no proof here that the defendant had taken away any money from the complaining witness. On those two grounds we ask for a directed verdict. There isn't even a scintilla of evidence that she is guilty of this crime, which requires certain elements that have not been met at all. Those are our grounds.

The Court: Ruling on your motion, Mr. Kobayashi, to constitute larceny, the statute says it is a felony, [37] the taking of anything of marketable, saleable, assignable or available value, belonging to or being the property of another. That is larceny. A person has the intent and commits the overt act. It doesn't make any difference what the value of the property is, except it fall under one of two categories, larceny in the first degree, or larceny in the second degree. That is where the value comes in, as long as it is property, and section 11438 provides for the degree. It says: "Larceny is of two degrees, first and second. Larceny of the property of the value of more than \$50.00 is in the first degree." So far as the fatal variance is concerned, the proof being, from the stories of the Prosecution's witnesses, this defendant took over \$50.00, and so that being the case whether it is \$160.00 or \$163.00, that this particular complainant misses, is immaterial,

because that still falls into the first degree larceny category. That being your first ground, the Court will overrule it. The second ground was——

Mr. Kobayashi: May I make a statement on that? As I understand it, in a question of money it is like a bank note, promissory note, etcetera. Any material variance is fatal—that if the allegation is that he has stolen \$100.00 and the proof is that it is an entirely different sum of money, I believe that that is a fatal variance, not in the sense the Court has stated. I know what the Court is stating, the only time it makes any difference is whether it becomes first or second degree larceny. Here we have a question of money which can be described with definiteness. You know whether you have had \$100.00 or \$120.00. You can't go around and state that a defendant [38] stole \$1,000 and finally prove she stole \$100.00, or make a statement that he lost \$100.00 and that same sum of money was found on her. Where there is a definite variance—the complainant says he couldn't possibly have had \$150.00——

The Court: I don't recall his making such a statement. He said he had \$160.00 plus some change from a \$10.00 bill.

Mr. Kobayashi: I brought that out. I asked him what he did. He had \$170.00. I asked him two or three times. He said he took \$10.00 out of his wallet and left \$160.00 in his wallet. That was the last time he touched that purse. The change out of the \$10.00 was still in his pocket. He said he had some change.

The Court: That is a matter of argument,

whether she got this \$160.00 from the wallet and \$3.00 from the change that was left over, or whether she got the \$3.00 from somebody else, or had it on her person. As far as the Court is ruling, the Court finds, if the testimony of the Prosecution's witnesses is to be believed, she got over \$50.00 from this particular complainant, which would bring it in the category of larceny in the first degree. Just how much over that she got is immaterial so far as this case is concerned. I can see your point and under different circumstances you might have something. For instance, suppose she was charged with taking this particular sum, this particular money, and it was found to be some other money from somebody else, or some other place, or some other circumstances showed up, but in this case it is the same money that everybody is talking about, but there may be \$3.00 of it that conceivably would have to be turned back to the [39] woman when the trial of the case is finished.

Mr. Kobayashi: Save an exception.

The Court: Exception noted. Anything further? If not, the Court will direct the jury to be brought back.

(Whereupon the members of the jury returned to the courtroom and resumed their places in the jury box.)

The Court: The record will show the jurors are all present. Proceed.

Mr. Kobayashi: The defense rests, your Honor.

The Court: Anything further, then? The Defense is resting. You have nothing further?

Mr. St. Sure: No, I haven't, your Honor.

The Court: Do you have your Instructions ready or not?

Mr. St. Sure: I have.

Mr. Kobayashi: I have not.

The Court: Will it be convenient for both attorneys if the Court directs the jury to return at 2:00 o'clock?

Mr. St. Sure: That will be satisfactory, your Honor.

Mr. Kobayashi: Yes, your Honor.

The Court (To the jury): You are excused then until 2:00 o'clock this afternoon.

(Whereupon the jury left the courtroom.)

The Court: Mr. Kobayashi, will you be able to have your instructions ready by 1:30?

Mr. Kobayashi: I have only one instruction.

The Court: Do you have all your instructions, Mr. St. Sure?

Mr. St. Sure: Yes, your Honor. [40]

The Court: Suppose you leave your instructions and the Court will look at them. Give Mr. Kobayashi a copy, and I will get together with both attorneys in Chambers at 1:30, or sooner if you can be here, to go over the instructions. If there is nothing further the Court will recess until 1:30.

(11:00 a.m., the Court recessed until 1:30 p.m.) [41]

Wednesday, August 17, 1949—1:50 o'Clock P.M.

(In Chambers.)

(The Clerk called the case.)

(Settling of Instructions. Following the settling of instructions the following proceedings were had:)

Mr. Kobayashi: May I be allowed to make a further ground on my motion to dismiss. I left out one point.

The Court: In what respect to dismiss the charge?

Mr. Kobayashi: Upon insufficient evidence. The other was fatal variance, and the third point I want to bring out is—I want to press that point now at the end of the case, about the inadmissibility of the evidence as to the money they found, etcetera, because at that time we didn't know how it was going to be connected. I object now. I wanted to get a motion to strike after I closed my case. I have a hunch I am a little late now. I wanted to make a motion to strike the testimony of the witnesses as to the finding of the money.

The Court: They testified they saw a bulge and she spit it out.

Mr. Kobayashi: Yes. At that time I objected to the money going into evidence.

Mr. St. Sure: Did you state the reason?

Mr. Kobayashi: I gave the reasons. I don't know whether I stated the other reason, that unless there is a showing by direct evidence, a *prima facie*

case of larceny connecting this defendant up with the larceny it is not admissible.

The Court: Do you have anything else?

Mr. Kobayashi: That is all. I want to get it in [42] in open court.

The Court: Do you want to make it now?

Mr. Kobayashi: I am doubtful about making a motion without the presence of the jury, whether it is sufficient. We have a jury case, I have to make it in the presence of the jury. The record will show I actually made the original motion in the presence of the jury.

The Court: The Court will note your motion and overrule it.

Mr. Kobayashi: Save an exception.

The Court: Exception noted.

Mr. Kobayashi: May I at this time be permitted to make a motion to strike the testimony of the witnesses Schwartzman and Guigni as to the finding of the money, on ground that at that time, besides the other two grounds I stated, on the ground there is no direct evidence, no prima facie case that there was any larceny being committed; that the evidence, like a confession, is inadmissible. In other words, it would be like a defendant being forced to testify against herself. I objected at that time and the Court overruled me. We went on further——

The Court: Your motion to strike is denied.

Mr. Kobayashi: I want to be permitted to make a motion to strike.

The Court: The motion to strike is denied.

Mr. Kobayashi: 32 American Jurisprudence,

1040, that is the basis for my motion. That is why I was concerned about Officer Schwartzman coming in out of order. The only evidence we have here is that he found the defendant with the money in her hands. That is all we have up to there. [43] Then they bring in the fact that she had some money in her mouth. My contention is that is not admissible, unless there is a prima facie case of larceny by direct or circumstantial evidence. If they had stopped at that time there is no prima facie case of any larceny. The man himself says he doesn't know how he lost his money.

The Court: He didn't say exactly he did know how he lost his money. His testimony was he didn't look in his wallet after putting it in his pocket.

Mr. Kobayashi: As far as we know we don't know how he lost the money. He said he didn't.

The Court: Is that his action after he thought he lost the money by running after the defendant after his suspicions were aroused?

Mr. Kobayashi: That is not a prima facie case of larceny. They didn't establish a prima facie case until they found the money in her possession.

The Court: The point you are contending for is a matter of argument, since he put his money in his pocket early in the evening at the hotel and didn't look at his wallet again. Someone else could have come along and taken the money, or any sort of thing could have happened since in the meantime a lot of time had gone by, but then the Prosecution brought out how he knew he lost the money. His testimony shows, and his actions on that night show how he lost the money, his suspicions were aroused

immeditaely after she stopped playing with him. He looked in his wallet, his money was gone, he ran after the woman. When the police came up she had a bulge in her mouth. When she removed the bulge the policeman saw it was money. If she didn't commit the [44] crime, why did she keep it in her mouth?

Mr. Kobayashi: Our contention is, that the basis of our motion to strike all that is the fact that at the time, up to the time when they say they found this bulge and contents in her mouth, up to that time I claim the Prosecution did not establish a prima facie case of larceny. All the elements were not present. Therefore, without having established a prima facie case that evidence is not admissible. Those are the only grounds I have. That is my understanding of the law. In my opinion all the elements of the crime of larceny were not present. If we had stopped right then, before they talked about finding the bulge in her mouth, without establishing a prima facie case of larceny, either by direct or circumstantial evidence, that evidence could not come in.

The Court: The Court will overrule you on that, Mr. Kobayashi, because on the order of the witnesses the complaining witness was about the first witness and since his testimony and the other was all connected up. It is all a matter of argument.

Mr. Kobayashi: Save an exception.

The Court: Yes. Anything further now?

Mr. Kobayashi: No, your Honor.

(After a short recess, Court reconvened at 2:20 p.m.)

The Court: Let the record show the jurors are all present, and the defendant. Proceed.

Mr. Kobayashi: If the Court please, at this time, before proceeding, may I at this time renew my motion for a directed verdict at the end of the defendant's case, on [45] the grounds heretofore stated.

The Court: Do you want the jury excused?

Mr. Kobayashi: No, your Honor.

The Court: You may proceed.

Mr. Kobayashi: First, that there is a fatal variance between the allegation and the proof. Secondly, that there was introduced in evidence that which was inadmissible, that is the evidence—the testimony of Police Officers Guigni and Schwartzman. Their testimony as to the finding of certain sums of money before the Prosecution had by direct or circumstantial evidence proven—made out a prima facie case of larceny. My understanding of the law is that that evidence is inadmissible, and, Third, on the ground that there is no evidence at all here upon which to base a conviction of larceny.

The Court: Any other grounds?

Mr. Kobayashi: No, your Honor.

The Court: The Court will overrule the motion for a directed verdict. Is that your motion?

Mr. Kobayashi: Yes, sir. May we save an exception?

The Court: Exception noted. Each side has rested?

Mr. St. Sure: Yes, your Honor.

The Court: You, Mr. Kobayashi, and you, Mr. St. Sure?

Mr. Kobayashi: Yes, your Honor.

The Court: The only thing that remains now then is the argument of counsel. You may proceed.

(Opening argument by counsel for the Prosecution.)

(Reply argument by counsel for the defendant.)

(Closing argument by counsel for the Prosecution.) [46]

The Court: Gentlemen of the Jury: The defendant in this case, Sable Hall, stands charged with the crime of larceny in the first degree.

You are the exclusive judges of the facts in this case and the credibility of the witnesses but the law you must take from the court as given you in these instructions to be the law notwithstanding any opinion that you may have as to what the law is or should be.

I further instruct you that larceny under our statute is defined as follows: "Larceny or theft is the feloniously taking any thing of marketable, saleable, assignable or available value, belonging to or being the property of another." Larceny is of two degrees, first and second. Larceny of property of the value of more than fifty dollars is in the first degree. All other larceny is in the second degree.

The essential elements of larceny are: (1) The

taking (2) and carrying away (3) of personal property (4) of another (5) without the owner's consent (6) with the specific intent to deprive the owner permanently of his property; and in this connection you are instructed that everyone is presumed to intend the natural and probable consequences of his own act.

I further instruct you that in order to be the subject of larceny, a thing must be owned by, or be the property, general or special, of, or belonging to, someone. That is, someone must have a property, general or special, in the thing; or have and be entitled to the possession of the thing.

In this connection, I charge you that the legal title to money in the possession and control of a person is in [47] that person and, as a matter of law, is the general property of that person.

I further instruct you that in order to be the subject of larceny, a thing must be movable, or such that it can be removed.

In this connection, I charge you that money is movable.

I further instruct you that in order to be the subject of larceny, a thing must be the subject of property and possession.

In this connection, I charge you that money is the subject of property and possession.

I further instruct you that "feloniously" as used in these instructions means a wrongful act done wilfully.

In instruct you, Gentlemen of the Jury, that the defendant may or may not testify in her own be-

half as she pleases. In this case, the defendant has not testified in her own behalf and that fact should not create any presumption of guilt against her and should not have any influence upon arriving at your verdict.

The Court further instructs you, Gentlemen of the Jury, that you are the exclusive judges of the credibility of the witnesses, of the weight of the evidence, and of the facts in this case. It is your exclusive right to determine from the appearance of the witnesses on the witness stand, their manner of testifying, their apparent candor or frankness, or lack thereof, which witness or witnesses are more worthy of credit, and to give weight accordingly. In determining the weight to be given the testimony of the witnesses you are authorized to consider their relationship to the parties, if any, their interest, if any, in the [48] result of the case, their temper, feeling or bias, if any has been shown, their demeanor on the witness stand, their means and opportunity of information and the probability or improbability of the story told by them.

If you find and believe from the evidence that any witness in this case has knowingly and wilfully sworn falsely to any material fact in this trial or that any witness has knowingly and wilfully exaggerated or suppressed any material fact or circumstance in this trial for the purpose of deceiving, misleading or imposing upon you, then you have a right to reject the entire testimony of such witness except insofar as the same is corroborated by other credible evidence or believed by you to be true.

I further instruct you that the burden of proof is upon the Territory and the law, independent of the evidence, presumes the defendant to be innocent, and this presumption continues and attends him at every stage of the case until it has been overcome by evidence which proves him guilty to your satisfaction and beyond a reasonable doubt. And in this connection, I instruct you that the doubt which will entitle the defendant to an acquittal must be a reasonable doubt, not a conjured-up doubt, such a doubt as you might conjure up to acquit a friend, but a doubt that you could give a reason for. A reasonable doubt is not a possible doubt, not a conjectural doubt, not an imaginary doubt, not a doubt of the absolute certainty of the guilt of the accused, because everything relating to human affairs and depending upon mortal evidence is open to conjectural or imaginary doubt, and because absolute certainty is not required [49] by law. The real question is whether after hearing the evidence and from the evidence you have or have not an abiding belief, amounting to a moral certainty, that the defendant is guilty, and if you have such belief so formed, it is your duty to convict. You should take all the testimony and all the circumstances into account and act as you have such abiding belief the fact is.

I further instruct you that you may bring in, under the charge against the defendant in this case, one of the following verdicts as the facts and circumstances in evidence under the law as given you in these instructions may warrant: (1) Guilty as charged; (2) Not Guilty.

Gentlemen of the Jury, in connection with the Court's last instruction, the Clerk, at the Court's direction, has prepared two forms of verdict. Upon retiring you will appoint one of your members as foreman, to supervise and manage your deliberations. Upon arriving at a verdict the foreman will sign the verdict, and date the same, and after the proper form of verdict has been filled in by the signing and dating, the foreman will then notify the bailiff, and the court will then reconvene.

I will ask the Clerk now to please swear the bailiff.

(Bailiff duly sworn to take the jury in charge.)

The Court: The Court will ask the parties to clear the courtroom so that the jury may retire and conduct their deliberations.

(2:55 p.m., jury retired for their deliberations.)

3:03 P.M.

(Court reconvened.)

The Court: Gentlemen of the Jury, the [50] bailiff informs me that you have arrived at a verdict. The Court will ask the foreman to hand the verdict to the Clerk.

(Whereupon the foreman of the Jury handed to the Clerk the verdict.)

The Court: The Clerk will read the verdict.

Whereupon the Clerk read the Verdict, as follows: Criminal No. 21118. In the Circuit Court of the First Circuit, Territory of Hawaii. January

Term, A.D. 1949. Honorable John E. Parks, Third Judge presiding. Territory of Hawaii versus Sable Hall, Defendant. Verdict. We, the Jury in the above-entitled cause, find the defendant guilty as charged. Signed John T. Pope, Foreman. Honolulu, T. H., August 17, 1949.

The Court (To the defendant): Pursuant to the verdict of the jury, the Court finds and adjudges you, Sable Hall, to be guilty as charged. The verdict will be received and filed. The matter of sentence in this case will be continued until Friday at 1:30 p.m.

Mr. Kobayashi: At this time may I except to the verdict of the jury as being contrary to the law and to the evidence, and the weight of the evidence.

The Court: Yes, your exception is noted. Gentlemen of the Jury, the Court will excuse you until further. The Court thanks you for your services.

(Court adjourned.) [51]

Reporter's Certificate

I Hereby Certify that the foregoing, pages 3 to 51, both inclusive, is a true and correct transcript of my shorthand notes taken in the above-entitled cause before Honorable John E. Parks, Third Judge, Circuit Court of the First Judicial Circuit, Territory of Hawaii, on Wednesday, August 17, 1949.

/s/ ANNE R. WHITMORE,

Honolulu, T. H., November 7, 1949. [52]

Friday, September 9, 1949—1:30 o'clock p.m.

(Upon the clerk calling the case, the following occurred:)

The Court: Is there anything that you care to say before the court pronounces sentence?

Mr. Kobayashi: No, your Honor.

The Court: All right, if there is nothing further, the court would like to observe that this court has had many criminal cases, but it has never had anyone come before it with a criminal record as long nor covering as many criminal offenses as Sabel Hall. Are you familiar with the criminal record? It covers five pages of every conceivable sort of offense, larceny, prostitution, soliciting, of every conceivable sort. So if there is nothing further before the court it is the sentence of the court that you, Sabel Hall, be imprisoned in Oahu Prison at hard labor for a period of not more than ten years. Mittimus to issue forthwith.

Mr. Kobayashi: At this time we give notice of an appear; may a bond be set and mittimus stayed until Monday, so that we can take care of this by way of writ of error?

The Court: Yes.

Mr. Kobayashi: There is a bond set now, I think, if that amount is sufficient.

The Court: What is the bond?

Mr. Kobayashi: \$500.00.

The Court: I don't think that is enough in view of the fact that she is from the mainland.

Mr. Kobayashi: Your Honor, she has a home here, [53] and also has a business.

The Court: What is this business?

Sabel Hall: Haberdashery.

The Court: Where is your store located?

Sabel Hall: Smith street.

The Court: What's the number?

Sabel Hall: 3031. We only been in a month and a half.

The Court: What's the name of your shop or store?

Sabel Hall: It has no name, variety shop. I only been there a month and a half, and I have not—you know, the merchandise is a little short, owing to the fact that I had to come before you on bond.

The Court: The court will set the bond in your case in the sum of \$2,000.00.

Mr. Kobayashi: Well, your Honor, the difficulty that she has—I mean with all defendants—if the bond is set so high she may be deprived of her right to appeal. I believe there are some points of law that have merit that if the bond is set so high it deprives the defendant of the right of appeal.

The Court: If she has property there should be no difficulty.

Sabel Hall: I don't own any property, it is an option on a place at Nanakuli. I haven't bought it yet, because of this case.

The Court: If you don't own any property here the court is inclined to set the bond higher. [54]

Sabel Hall: I have an option on it. I have my

money up on it. I am not going away. I don't want to go to the mainland.

The Court: All right.

Mr. Kobayashi: I believe \$1,000.00 is sufficient. It is awfully difficult to get a thousand dollars these days.

The Court forfeited this afternoon two bonds. They were pretty high bonds, but the defendant left, anyway.

Sabel Hall: I am not going anywhere.

Mr. Kobayashi: In that case those were paper bonds, were they not? If the bond is set so high, it is impossible for her to get it.

The Court: Well, I don't want to deprive her of her right to appeal and go out on bond, but I do feel that since she is from the mainland, and in view of her record, and the fact that the court sentenced her to ten years, I do not think it would be safe to allow her to be on bond for less than \$2,000.00. In fact, I am hesitant about making it that low.

Mr. Kobayashi: May the mittimus be stayed until Monday? The bondsman is in court. Can we have the mittimus stayed until Monday so that she can raise this money?

The Court: The court will stay the mittimus until Monday, and if you get yourself involved in any further difficulty the court will take that matter up at any time in the future, or revoke the stay of mittimus. You understand? [55]

Mr. Kobayashi: Can she have until Monday noon?

The Court: All right. Monday, we will make it at 1:30 p.m.

(Whereupon the matter having been concluded, the court proceeded to other business.)

Reporter's Certificate

First Circuit Court,
Territory of Hawaii—ss.

I certify the above to be a true and correct transcript of the proceedings in the matter of Territory of Hawaii, vs. Sabel Hall, sentence, on September 9, 1949, before the Hon. John E. Parks, Circuit Judge, Honolulu, T. H.

/s/ SIDNEY MINNS.

Honolulu, T. H., November 7, 1949. [56]

[Title of Supreme Court and Cause.]

SUPREME COURT CLERK'S CERTIFICATE

I, Leoti V. Krone, clerk of the Supreme court, of the Territory of Hawaii, do hereby certify that the documents listed in the index to the certified record on appeal to the United States Court of Appeals for the Ninth Circuit in the above-entitled cause are certified copies of the originals on file in the above court, including the transcript of testimony No. 1105, which is a certified copy of the original on file in above court and cause in accordance with the certificate of the reporters attached

In the United States Court of Appeals
for the Ninth Circuit

No. 13536

TERRITORY OF HAWAII,

Defendant in Error,

vs.

SABLE HALL,

Plaintiff in Error.

STATEMENT OF POINTS RELIED UPON
AND DESIGNATION OF RECORD

Comes now Sable Hall, by her attorney, J. Donovan Flint, and hereby adopts her assignments of error appearing in the Transcript of Record as the points upon which she intends to rely on appeal, and designates the entire Transcript on appeal as set forth in the Praecipe filed with the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, Territory of Hawaii, this 26th day of September, 1952.

SABLE HALL,

Plaintiff in Error,

By /s/ J. DONOVAN FLINT,

Her Attorney.

[Endorsed]: Filed Oct. 1, 1952.

MEMORANDUM FOR THE DIRECTOR, FBI

DATE: 10/15/54

RE: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]

Very truly yours,

[Illegible Signature]

Special Agent in Charge

[Illegible]

CONFIDENTIAL